IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

MONDAY, THE 9TH JULY 2007 / 18TH ASHADHA 1929

LA.App.No. 1137 of 2000(D)

LAR.308/1997 of PRL.SUB COURT, KOZHIKODE
.....

APPELLANT:Respondent:-

STATE OF KERALA

BY GOVERNMENT PLEADER SMT.K.R.DEEPA.
ADVOCATE GENERAL

RESPONDENT:Claimant:-

C.E.V. SAFIYA, CHERIYA EDIYAMAM VEETTIL,
NAGARAM VILLAGE, KOZHIKODE DISTRICT.

BY ADV. SRI.C.P.MOHAMMED NIAS
SMT.USHA RAVEENDRAN.

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 09/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.No.272/2001 in L.A.ANo.1137 of 2000.

DISMISSED.

9-7-2007. **Sd/- Kurian Joseph, Judge.**

Sd/- T.R.Ramachandran Nair, Judge.

-// true copy //-

kvs/-

P.S. To Judge.

KURIAN JOSEPH,

&

T.R.RAMACHANDRAN NAIR, JJ.

= = = = = = = = = = = = = = = = = =

LAA.No.1137 of 2000-D

&

Cross Objection.

= = = = = = = = = = = = = = = = = =

Dated this the 9th day of July, 2007.

J U D G M E N T

T.R.Ramachandran Nair, J.

This appeal is filed by the State aggrieved by the judgment and decree in LAR.No.308/1997 of the Subordinate Judge's Court, Kozhikode.

2. The acquired property is having an extent of 0.0157 hectors in RS.No.1022-26/2 of Nagaram Village. The notification under Section 4(1) was published on 17-9-1993, award was passed on 31-5-1994 and possession was taken on 28-7-1994. The land value fixed as per the award is at the rate of Rs.41,850.61 per cent.

3. The claimant sought enhanced compensation based on various factors including the importance of the acquired land, being near to so many important institutions. The evidence consist of oral testimony of PWs.1 and 2 and Exts.A1 to A12 as well as report of the commissioner which was marked as Ext.C1.

4. The claimant has produced Exts.A1 to A12 for the purpose of

claiming enhanced land value. Except A8, an assignment deed of the year 1978, A10, a gift deed dated 11-2-1983 and Ext.A12 which is an assignment deed of the year 1999, the other documents actually are only documents to prove the rental arrangement, rate of rent etc. Ext.A12 is a post notification document and was not relied upon by the court below.

5. The report of the commissioner shows that he was of the opinion that the market value will be at Rs.4 lakhs to Rs.5 lakhs. The commissioner has formed the opinion without reference to any comparable sale deeds or other relevant materials. It was merely on the basis of informations gathered in local enquiries. Ultimately this was the only material relied on by the court to fix the market value at Rs.2 lakhs per cent. We find that the said method adopted by the court below is not legally correct.

6. In a reference under Section 18, the court below has to fix the market value on the basis of the evidence adduced by the parties. The endeavour should be to arrive at a just and fair compensation. The well established method is by comparing land value reflected in similar transactions. The potential value of the land can also be assessed by relevant materials. But herein the claimants have not made any effective attempts by producing sale deeds which would reflect the market value of the land acquired at the time of acquisition. Therefore, the market value now fixed is on the basis of a commission report which, as we have pointed out earlier, is

also not based on an assessment of any relevant materials. Therefore, the value now fixed by the court below is only on the basis of guess work alone which is impermissible in law.

7. In the light of the above, we set aside the judgment and decree and remand the matter for fresh disposal in accordance with law. The parties will be allowed to adduce fresh evidence in the matter. The Cross Objector in Cross Objection will be entitled for refund of the court fee paid on the memorandum of appeal. The appeal and the cross objection are disposed of accordingly. No costs.

KURIAN JOSEPH, JUDGE.

T.R.RAMACHANDRAN NAIR, JUDGE.

Kvs/-